

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Anita Russell, :  
 :  
Plaintiff, :  
 :  
v. : Case No. 2:08-cv-0296  
 : JUDGE HOLSCHUH  
Commissioner of Social :  
Security, :  
 :  
Defendant.

ORDER

This matter is before the Court to consider de novo the plaintiff's objections to a Report and Recommendation of the Magistrate Judge recommending that judgment be entered in favor of the Commissioner. For the following reasons, those objections will be overruled and judgment will be entered for the defendant.

Plaintiff raises the following objections to the Report and Recommendation. She asserts that the Magistrate Judge erred by finding that the Commissioner adequately evaluated her subjective complaints of pain and the opinions of her treating physicians, that the Magistrate Judge should not have overruled her claim of bias on the part of the Administrative Law Judge, that the Magistrate Judge did not properly deal with her claim that the vocational expert's testimony was inadequate, and that the evidence which she submitted to the Appeals Council should have been found to have been "material" and therefore grounds for a sentence six remand. These are essentially the same claims that she raised in her statement of errors.

The Court concludes that extensive discussion of these issues is not warranted. The Report and Recommendation addresses each of these contentions thoroughly, and the Court agrees that many of these issues are matters about which the Commissioner has

considerable discretion to decide, assuming compliance with the applicable legal regulations concerning, for example, the articulation of valid reasons for discounting a claimant's testimony of disabling symptoms or discounting opinions of treating sources. The ALJ adequately articulated reasons for concluding that plaintiff had a residual functional capacity which exceeded, to some extent, that to which she testified, and that expressed by some of the treating sources, many of whom evaluated her capacity prior to back surgery. Thus, the residual functional capacity described to the vocational expert was based on substantial evidence in the record. For the reasons stated in the Report and Recommendation, the Court also finds that there was no evidence of undue or prejudicial bias on the part of the ALJ and that the new evidence presented to the Appeals Council was largely cumulative of treatment records considered by the ALJ, and therefore not likely to have changed the Commissioner's decision.

For these reasons, the plaintiff's objections to the Report and Recommendation of the Magistrate Judge are OVERRULED, and the Report and Recommendation is ADOPTED. The plaintiff's statement of errors is OVERRULED, the decision of the Commissioner is AFFIRMED, and the Clerk is directed to enter judgment in favor of the defendant Commissioner.

Date: September 10, 2009

/s/ John D. Holschuh  
John D. Holschuh, Judge  
United States District Court